IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 1 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE CONTROLLER OF ESTATE DUTY

Versus

SHRI G.K. SWARUP

Appearance:

1. ESTATE DUTY REFERENCE No. 1 of 2000
MR MANISH R BHATT for Petitioner No. 1
MR BP MUNSHI for Respondent No. 1
MS NIRALI B MUNSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question of law has been referred for our opinion:-

"Whether the Appellate Tribunal is right in law and on facts in directing the Assistant Controller of Estate Duty to make valuation of shares of Private Limited Company in accordance with Rule 1D of the Wealth Tax Rules and not in accordance with the general break up method?"

2. On the date of his death i.e. on 18.2.1979, the deceased had 206 shares of a certain private limited company. The accountable person declared the value of these shares at the rate of Rs.1553/- per share. The computation was made in accordance with the provisions of Rule 1D of the Wealth Tax Rules, 1957. The Assistant Controller of Estate Duty did not accept the valuation made by the accountable person. According to him, the valuation should not be made in accordance with the principle laid down in the said Rule. He made addition of Rs.10,000/- to the value of land owned by the company, Rs.33,000/- to the value of the other assets mentioned in the balance sheet and Rs.87,000/- towards value of goodwill which had not been mentioned at all in the balance sheet. Thus he made additions in the value shown in the balance sheet and came to the conclusion that the value would be Rs.2256/- per share. The value of Rs.3,19,981/- declared by the accountable person was increased at Rs.4,65,736/- by the Assistant Controller of Estate Duty which was confirmed by the Controller of Estate Duty (A).

The respondent-assessee carried the matter in appeal before the Tribunal. The Tribunal held that Rule 1D of the Wealth Tax Rules was liable to be adopted for making valuation under the Estate Duty Act as there could not be two different methods of valuation for the purpose of Estate Duty and for the purpose of Wealth tax. Accordingly, the Tribunal held in favour of the assessee. Hence, this reference at the instance of the revenue.

3. At the hearing of this reference, our attention is invited to the decision of the Hon'ble Supreme Court in Bharat Hari Singhania vs. Commissioner of Wealth tax, 207 ITR 1. In the said decision, the Apex Court has held that Rule 1D of the Wealth tax Rules contains the break up method which is undoubtedly one of the recognised methods of valuing unquoted equity shares. Even if it is assumed that there was another method available which was

more appropriate, still the method chosen cannot be faulted so long as the method chosen is one of the recognised methods, though less popular. The break-up method based upon the balance sheet of the company, incorporated in Rule 1D, is a fairly simple one. Rule 1D has to be followed in valuing each and every case of unquoted equity share of a company (other than an investment company or a managing agency company). It is not a matter of choice or option. The rule-making authority has prescribed only one method for valuing the unquoted equity shares. If this method were not to be followed, there is no other method prescribed by the rules. Where there is a rule prescribing the manner in which a particular property has to be valued, the authorities under the Act have to follow it. They cannot devise their own ways and means for valuing the assets.

Our attention is also invited to the decision of the Mysore High Court in Controller of Estate Duty, Mysore vs. J. Krishna Murthy, 96 ITR 87, wherein the Court was concerned with the identical question about applicability of Rule 1D of the Wealth tax Rules to Estate Duty. The Mysore High Court held that since no rules are prescribed under the Estate Duty Act for valuing unquoted equity shares, the method of valuation prescribed under the Wealth Tax Act has to be adopted.

4. In our view also, since the method of valuation for valuing unquoted equity shares has been prescribed in the Wealth Tax Rules, in absence of any such rule of valuation under the Estate Duty Act or the Estate Duty Rules, the method of valuation prescribed under the Wealth Tax Act is required to be adopted. We are accordingly in agreement with the view of the Mysore High Court.

5. Applying the ratio of the aforesaid decision of the Apex Court in Bharat Hari Singhania vs. CWT, 207 ITR 1 and extending the said principle to the valuation of unquoted equity shares under the Estate Duty Act, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M. KAPADIA, J.)
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